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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/685,770
Filing Date: October 14, 2003
Appellant(s): KAMPF ET AL.

Robert A. Kalinsky
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 11, 2011 appealing from the Office action mailed February 16, 2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-3, 5 and 6.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,450,458	BERNARD	9-2002
6,107,575	MIRANDA	8-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard in view of Miranda.

Bernard discloses a method of assembling a cable routing system 200 wherein a base element 220 is provided, the base element comprising a planar top surface having a linear mating edge on opposite sides of the planar top surface, a plurality of side elements 210 mounted to the base element by being integrally formed with the base

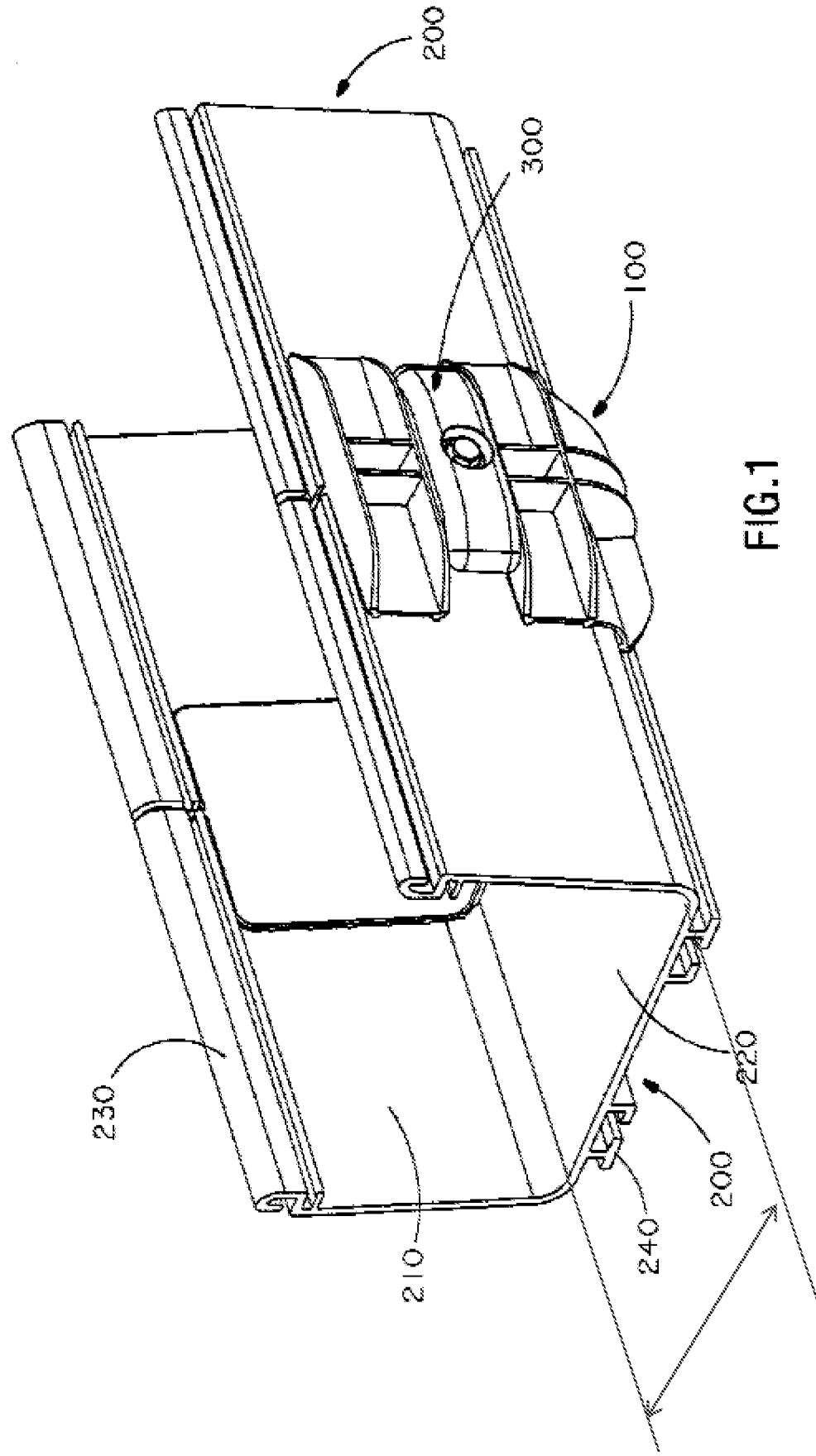
element, a first plurality of the side elements 210 having an upstanding wall portion extending to a vertical height above the planar top surface of the base element, a second plurality of the side elements defining side exits extending transversely to the edge of the base element (figs. 10 and 12) and down spout portions (fig. 13) to define a cable pathway extending from the planar top surface to a location below the planar top surface, see figures 1, 6, 10, 12 and 13. Although Bernard does not disclose each linear mating edge defining a first mounting structure, a plurality of side elements mounted to the base element along the linear mating edges by attaching second mounting structures formed on the side elements with the first mounting structure of the respective linear mating edge, the first and second mounting structures being connected to couple the side elements to the base elements, however such construction of a cable routing system is known as attested by Miranda, see figures 1, 2, and 5-7. Therefore it would have been obvious to form the cable routing system of Bernard from separate elements as taught by Miranda, in order to be able to transport the cable routing system in a flat space-saving condition and to form it, at a site of use, into a U-Shape cable channel by appropriately connecting the base and side elements. The examiner notes that such modification of the method of Bernard would have been obvious to try since it would have amounted to choosing from a finite number of identified, predictable solutions (cable routing systems consisting of two side walls and a bottom wall that are integral or cable routing systems consisting of two side walls and a bottom wall that are separately formed and subsequently attached to each other to form the cable routing system), with a reasonable expectation of success. Regarding

the recitation “the planar top surface being planar along an entirety of the base element extending between the first end and the second end, including between a first of the linear mating edges to a second of the linear mating edges, and between the first mounting structure of the first linear mating edge to the first mounting structure of the second linear mating edge”, the examiner submits that incorporating the mounting structures taught by Miranda in the cable routing system of Bernard would result in a planar top surface that is planar along an entirety of the base element extending between the first end and the second end, including between a first of the linear mating edges to a second of the linear mating edges, and between the first mounting structure of the first linear mating edge to the first mounting structure of the second linear mating edge as base element 220 of Bernard would be provided with the edge mounting structures illustrated in figure 2 of Miranda (see figure 1 of Bernard and figure 2 of Miranda). Appellant should note that the cable routing system of Bernard is formed of a plurality of base and side elements connected to each other. Also such cable routing systems are typically mounted so that the base elements are mounted at a vertical height above a telecommunications bay, and it would have been obvious to one of ordinary skill in the art to have utilized the modified cable routing system of Bernard and Miranda in such a manner.

(10) Response to Argument

In response to Appellant’s argument that neither Bernard nor Miranda discloses a planar surface as recited in claim 1, the examiner submits that the combination of Bernard and Miranda would provide a planar surface as recited in claim 1. Figure 1 of

Bernard is reproduced below with the examiner's annotations to indicate a planar surface, and mounting structures as taught by Miranda (fig. 2) would be provided on linear edges of the base element. Further figure 10 of Appellant's disclosure depicts a structure that is similar to the structure of figure 1 of Bernard.



In response to Appellant's argument that it is not true that the system of Bernard is formed of a plurality of base and side elements connected to each other, the examiner respectfully disagrees. Appellant recognizes that in Bernard the duct section 200 includes a base 220 that is integrally connected to the sides 210 (page 14 of Appellant's Appeal Brief) so it is not clear why Appellant then argues that the system of Bernard is not formed of a plurality of base and side elements connected to each other. Clearly sides 210 are connected to base 220 even if the connection is an integral one.

In response to Appellant's argument that the "locking structures" of Miranda are elevated with respect to the top surface of the element 2 as shown in figure 1, the examiner submits that the claims do not require the locking structures to be in the same plane as the top surface of the base element. Further, Appellant's "locking structures" are actually located *below* the top surface of the base element and do not create a planar surface in conjunction with the base surface (e.g. see Figure 11 of Appellant's drawings).

In response to Appellant's argument that the references teach away from the purported combination because Bernard states that "The coupler 100 has an inner wall consisting of two side walls 110 and a bottom wall 120, which are preferably integral and continuous", the examiner submits that the term "preferably" suggests that preference is given to a particular embodiment in lieu of alternative ones, and does not exclude different embodiments. Therefore the only thing that can be inferred from the

cited portion of the Bernard reference is that Bernard favors an integrally formed routing system over one that is formed from separate elements for example.

In response to Appellant's argument that there is no suggestion provided as to how one would take the fittings disclosed in figures 10 and 12 of Bernard and incorporate the linear sections disclosed by Miranda to arrive at the claimed invention, the examiner submits that the proposed combination does not suggest coupling the fittings of Bernard to the side elements of Miranda but rather modifying the integral routing system of Bernard into one formed from separate elements as taught by Miranda.

In response to Appellant's argument that figure 11 of Appellant's disclosure does not show locking structures below the planar surface, the examiner respectfully disagrees. Figure 11 clearly shows locking structures (51, 52, 54, 55) below planar surface 14.

In response to Appellant's argument that there is no suggestion as to how or why one skilled in the art would be motivated to modify the fittings disclosed by Bernard based on the channels disclosed by Miranda to arrive at the claimed methods, the examiner once again submits that the proposed combination does not suggest modifying the fittings disclosed by Bernard but rather modifying the integral routing system of Bernard into one formed from separate elements as taught by Miranda. The fitting of Bernard could be formed in separate elements in the same way the routing system would be formed in separate elements in view of the teachings of Miranda. There are no specific structures recited by Appellant except for broadly recited first and

second mounting structures which, as shown in the above rejections, are taught by Miranda.

In response to Appellant's argument that none of Bernard and Miranda discloses or suggests that "the locking structures fall within the perimeter, which has a planar top surface along its entirety" as required by claim 3, the examiner respectfully disagrees. As pointed out above, the claims do not require the locking structures to be in the same plane as the top surface of the base element. Further Appellant's "locking structures" are below the top surface of the base element (as shown above with reference to figure 11) and do not create a planar surface.

In response to Appellant's argument that the Office action fails to disclose or suggest how and why one would have modified the locking structures of Miranda to accommodate a downspout, the examiner submits that it would not be necessary to modify the locking structures to accommodate a downspout as a downspout could be mounted at the end of a cable routing section or a section of a side wall could be cut out to accommodate a downspout, so a modification is well within the general skill level of a worker in the art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Essama Omgba/

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Conferees:

/DAVID P. BRYANT/

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